IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2812 OF 1991

Shri. Vijaylal Anantlal Pankhewale,
Age about 40 years, Occ. Business,
Residing at 250, Mahatma Fule Peth,
Pune. ..Petitioner.

Vs.

Pune Municipal Corporation,
Pune. ..Respondent.

Ms. Suhasini Mutalik for the Petitioner.
None for the Respondent.

CORAM : R.S. MOHITE, J.
DATED : 29.11.2005.

ORAL JUDGMENT :

1. By this writ petition, the petitioner impugns a judgment and order dated 23.8.1990 passed by the 8th Additional District Judge, Pune in Civil Appeal No.1160 of 1987 and a judgment and order dated 5.10.1987 passed by the Principal Judge, Small Causes Court, Pune in Municipal Appeal No.44 of 1986.

2. Heard learned counsel for the petitioner. The respondent has chosen to remain absent and not to engage an advocate though served.

3. The relevant facts of the case are as follows:

. The petitioner is the owner of a property bearing House No.250 situated in Mahatma Fule Peth, Pune. The said property, according to the petitioner, belongs to him and his brother. Construction upon the property was effected in the year 1978-79 and the rateable value had been fixed at Rs.2150/- by the Municipal Corporation in the year 1979. The original construction on the land was 970sq.ft. and in the year 1985 an additional construction of 509-sq.ft. came to be erected. The completion certificate in respect of the new construction was obtained in the year 1985. The respondent Corporation vide its notice bearing No.A/8/1985-86 directed the petitioner and his brother to remain present for hearing in respect of fixation of annual rateable value of the suit property. After hearing the petitioner, the Assessor & Collector of Taxes fixed the annual rateable value at Rs.9950/-.

4. The petitioner challenged this order passed by the Assessor and Collector of Taxes by filing Municipal Appeal No.44 of 1986 before the Principal Judge, Small Causes Court at Pune. The Principal Judge, Small Causes Court, Pune set aside the assessment, estimated the rent at Rs.500/-p.m. and directed the respondent Corporation to assess the premises at the said rent. The petitioner

then preferred Civil Appeal No.1160/1987 in the court of District Judge at Pune. The said appeal came to be dismissed on 23.8.1990.

5. On perusal of the judgments of the two lower courts, it appears that the Assessor and Collector of Taxes of the respondent corporation has assessed the premises at the estimated rent of Rs.763/- in respect of the newly constructed premises and fixed the rateable value at Rs.7800/- in respect thereof. To this amount he has added the old annual rateable value of Rs.2150/- and therefore, arrived at the rateable value of Rs.9950/-.

6. It appears that the Small Causes Court while partly allowing the Municipal appeal concluded that the estimated rent of Rs.763/- is high and unreasonable. The Judge gave no reason as to why he found the estimated rent to be high and unreasonable but proceeded to fix the rent at Rs.500/- in an arbitrary manner. He observed that the cost of the construction of the premises was claimed by the petitioner at Rs.31,206/- but there was no documentary evidence to prove the same.

7. On perusal of the evidence, it appears that the petitioner had entered into the witness box and stated

that the cost of the construction was Rs.31,206/-. There was absolutely no cross examination on this point. In a situation like this, when there is nothing on record to calculate the said rateable value except the cost of construction, the rateable value can be arrived at by using the Contractor's test. In so far as additional construction is concerned, the rateable value based on the capital valuation of the property can be accepted. My attention is drawn by the Advocate for the petitioner to the Commentary on Page 513 of the Book "Theory & Practice of Valuation" by Roshan Namavati. It is observed that the Government of India vide Circular No.4(7)P-65 dated 29.3.1967 addressed to all State Governments has agreed to accept the net rateable value at 9% of the capital value of the property whether it is residential or non residential. Taking 9% to be a reasonable return on the capital investment, the net rateable comes to Rs.2808.54. Adding to this earlier rateable value, gross rateable value in respect of entire premises comes to Rs.4958.54. In the circumstances, amount of Rs.4958.54 shall be taken to be the annual rateable value in respect of the petitioner's premises for the relevant year and tax will be calculated on this basis in accordance with law.

8. Accordingly, the petition is disposed of. Rule

is made absolute in the aforesaid terms. There will be no order as to costs.

(R.S. MOHITE, J.)